

1 Honorable Marsha J. Pechman
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 ALLIED WORLD NATIONAL
11 ASSURANCE COMPANY, as Assignee of
SMART CIRCLE INTERNATIONAL LLC,

NO. 2:20-cv-00154-MJP

STIPULATED PROTECTIVE ORDER

12 Plaintiff,

13 vs.

14 FOREMOST INSURANCE COMPANY
15 GRAND RAPIDS, MICHIGAN,

16 Defendant.

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18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or
20 private information for which special protection is warranted. Accordingly, the parties hereby
21 stipulate to and petition the court to enter the following Stipulated Protective Order. The
22 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
23 blanket protection on all disclosures or responses to discovery, the protection it affords from
24 public disclosure and use extends only to the limited information or items that are entitled to
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1 confidential treatment under the applicable legal principles, and it does not presumptively
2 entitle parties to file confidential information under seal.

3 2. **“CONFIDENTIAL” MATERIAL**

4 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged:

6 (a) the claims files of Foremost Insurance Company Grand Rapids,
7 Michigan related to the matter *Haley Shelland vs. Fred Meyer Stores, Inc., et al.* (filed in the
8 Superior Court of the State of Washington in and for King County, No. 17-2-09258-4);

9 (b) The underwriting file of Foremost for its Named Insured Revel
10 Marketing, Inc., which is not a party to this lawsuit;

11 (c) Foremost Insurance Company Grand Rapids, Michigan’s (“Foremost”)
12 claim handling manuals and similar materials concerning best practices for handling claims;
13 and

14 (d) Materials reflecting Foremost’s procedures that provide a competitive
15 advantage to Foremost and, if publicly disclosed, would cause substantial harm to the position
16 of Foremost with respect to its current competitors. Moreover, Allied World National
17 Assurance Company is a direct competitor of Foremost’s and the claims files, underwriters
18 files, claims handling manuals are proprietary and should not be used by Allied outside this
19 lawsuit.

20 3. **SCOPE**

21 The protections conferred by this agreement cover not only confidential material (as
22 defined above) but also (1) any information copied or extracted from confidential material;
23 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
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1 testimony, conversations, or presentations by parties or their counsel that might reveal
2 confidential material.

3 However, the protections conferred by this agreement do not cover information that is
4 in the public domain or becomes part of the public domain through trial or otherwise.

5 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

6 4.1 **Basic Principles.** A receiving party may use confidential material that is
7 disclosed or produced by another party or by a non-party in connection with this case only for
8 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
9 disclosed only to the categories of persons and under the Conditions described in this
10 agreement. Confidential material must be stored and maintained by a receiving party at a
11 location and in a secure manner that ensures that access is limited to the persons authorized
12 under this agreement.

13 4.2. **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
14 ordered by the court or permitted in writing by the designating party, a receiving party may
15 disclose any confidential material only to:

16 (a) the receiving party’s counsel of record in this action, as well as
17 employees of counsel to whom it is reasonably necessary to disclose the information for this
18 litigation;

19 (b) the officers, directors, and employees (including in house counsel) of
20 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
21 parties agree that a particular document or material produced is for Attorney’s Eyes Only and
22 is so designated;

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(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) third-party copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets

1 forth the procedures that must be followed and the standards that will be applied when a party
2 seeks permission from the court to file material under seal. A party who seeks to maintain the
3 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
4 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will
5 result in the motion to seal being denied, in accordance with the strong presumption of public
6 access to the Court's files.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
9 party or non-party that designates information or items for protection under this agreement
10 must take care to limit any such designation to specific material that qualifies under the
11 appropriate standards. The designating party must designate for protection only those parts of
12 material, documents, items, or oral or written communications that qualify, so that other
13 portions of the material, documents, items, or communications for which protection is not
14 warranted are not swept unjustifiably within the ambit of this agreement.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
16 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
17 unnecessarily encumber or delay the case development process or to impose unnecessary
18 expenses and burdens on other parties) expose the designating party to sanctions.

19 If it comes to a designating party's attention that information or items that it
20 designated for protection do not qualify for protection, the designating party must promptly
21 notify all other parties that it is withdrawing the mistaken designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
23 agreement, (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
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1 ordered, disclosure or discovery material that qualifies for protection under this agreement
2 must be clearly so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents
4 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
6 contains confidential material. If only a portion or portions of the material on a page qualifies
7 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
8 making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial proceedings: the
10 parties and any participating non-parties must identify on the record, during the deposition or
11 other pretrial proceeding, all protected testimony, without prejudice to their right to so
12 designate other testimony after reviewing the transcript. Any party or non-party may, within
13 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
14 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
15 desires to protect confidential information at trial, the issue should be addressed during the
16 pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent
18 place on the exterior of the container or containers in which the information or item is stored
19 the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
20 protection, the producing party, to the extent practicable, shall identify the protected
21 portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the designating
24 party’s right to secure protection under this agreement for such material. Upon timely
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1 correction of a designation, the receiving party must make reasonable efforts to ensure that
2 the material is treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion
13 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
14 conference with other affected parties in an effort to resolve the dispute without court action.
15 The certification must list the date, manner, and participants to the conference. A good faith
16 effort to confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under
19 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
20 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
21 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
22 burdens on other parties) may expose the challenging party to sanctions. All parties shall
23 continue to maintain the material in question as confidential until the court rules on the
24 challenge.

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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a party is served with a subpoena or a court order in other litigation that compels
4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the subpoena or
10 order is subject to this agreement. Such notification shall include a copy of this agreement;
11 and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this
17 agreement, the receiving party must immediately (a) notify in writing the designating party of
18 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
19 protected material, (c) inform the person or persons to whom unauthorized disclosures were
20 made of all the terms of this agreement, and (d) request that such person or persons execute
21 the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties
8 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each
11 receiving party must return all confidential material to the producing party, including all
12 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
13 methods of destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until
19 a designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 DATED:
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GILLASPY & RHODE, PLLC

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*Attorney for Defendant Foremost Insurance
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DATED: _____

By:

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED
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3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
4 any documents in this proceeding shall not, for the purposes of this proceeding or any other
5 federal or state proceeding, constitute a waiver by the producing party of any privilege
6 applicable to those documents, including the attorney-client privilege, attorney work-product
protection, or any other privilege or protection recognized by law.

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8 DATED: December 23, 2020

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12 Marsha J. Pechman
13 United States District Court Judge

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